

² K-WC E-1 Application for Hearing (filed Feb. 5, 2002).

2001 and each and every working day thereafter.”³ The ALJ then made the finding that “[c]laimant was injured out of and in the course of her employment with the [r]espondent on June 2, 2001.”⁴ Adopting the opinions of the court-ordered independent medical examiner/authorized treating physician and another one of claimant’s treating physicians, the ALJ found claimant suffered a scheduled injury to her right upper extremity, rather than an injury to the body as a whole. Claimant was awarded permanent partial disability compensation for a twenty-two (22) percent impairment to the right upper extremity, at the level of the shoulder.

Claimant argues the Board should rely upon the expert medical testimony of Dr. Pedro A. Murati and Dr. C. Reiff Brown. Dr. Brown opined claimant sustained an eighteen (18) percent whole body impairment. Dr. Murati likewise opined claimant’s impairment extends to the body as a whole, including the upper back and neck, and rated her as having a twenty-one (21) percent whole body impairment. Claimant contends that Drs. Brown and Murati offer the better ratings under the *Guides*.⁵

Conversely, respondent contends that claimant’s neck was not injured or aggravated by the alleged series of accidents. Respondent points out that claimant had a preexisting neck problem and that except on her initial visit, claimant failed to make complaints of neck pain during the course of treatment with her treating physician, Dr. Daniel J. Prohaska.

The sole issue on appeal is the nature and extent of claimant’s disability, specifically her impairment of function.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties’ briefs and oral arguments, the Board finds that the ALJ’s Award should be affirmed. The Board adopts the ALJ’s findings of fact and conclusions of law set forth in the Award.

Claimant started working for respondent through a temporary agency in May of 1995. She became a permanent employee with respondent in August of 1995. Claimant was hired for a full-time position working on the shop floor pinning parts. This entailed stacking sheets of metal, putting them in a fixture and shooting long nails through them with an air hammer. She described the air hammer as looking like a gun. It is approximately 8 to 10 inches long and it can be held in one hand. Claimant explained that there are several crimped layers of sheet metal that are put together to make one part, and

³ ALJ Award (Oct. 11, 2004) at 2.

⁴ *Id.* at 3.

⁵ American Medical Ass’n, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

several parts make an element. As to how many layers of crimped sheet metal she normally pinned at one time, claimant testified it depended on the crimp height. Bricks known as 700Y, 4Y, and 3Y are comprised of 72, 12, and 12 layers, respectively. The total weight is dependent upon the length of the bricks; a 60-inch brick is approximately 50 to 60 pounds, unless it is the 3Y which is approximately 20 to 30 pounds. The weight of each brick also depends on the thickness of the material used.

On the date of claimant's work-related injury, the heaviest brick was approximately 75 pounds. Claimant lifted bricks with no assistance from a mechanical device. Claimant testified they pick up a brick off the table, put it in the pinning fixture, pin it, take it out of the pinning fixture and put it either on skids or in crates.

Claimant became a machine operator for respondent in 1996. Her job duties were pulling dies, setting up presses and also pinning parts. In 1997 claimant was promoted to a lead position. In this position claimant supervises employees and is on the shop floor every day conducting work on the computer such as data collections, closing out jobs and issuing material. She spends approximately two hours a day on the computer and works 10 to 11 hours a day. Claimant testified that from 1997 to the present her job duties have remained the same, except for "hot jobs" which are rush projects that need to meet certain shipping deadlines. The hot jobs required her to assist with pinning parts which could sometimes take all day, 10 hours a day if respondent did not have enough operators. Sometimes respondent may have a hot job two to three times a week.

Claimant testified that on either June 2 or 3, 2001, respondent received a hot job for which she did not have enough employees. Claimant went over to the press and helped with pinning the parts. After claimant had pinned parts most of the morning, her hand started swelling and hurting. Claimant described the pain as "throbbing"⁶ . . . "through my thumb, and it was shooting pain like up through my arm."⁷ Her supervisor, Ben Machebe, was not at work that day, nor were any other supervisors, so claimant sent Mr. Machebe an e-mail telling him she had hurt her right hand. After she e-mailed her supervisor, claimant stopped pinning the parts and started loading the hot job into the crate. This entails physically picking up the bricks, which are kept on skids, and putting them into the crate with a co-worker. These bricks weighed 75 pounds apiece. Claimant then used a fork lift to take the crate out onto the traffic area to be weighed and shipped. Claimant testified at the end of her shift her hand was "[v]ery sore."⁸

At that time claimant did not seek medical treatment. Claimant went to work on Monday, June 4, 2001. Claimant told Mr. Machebe her right hand was hurting and that she

⁶ Fleming Depo. at 23.

⁷ *Id.* at 28.

⁸ *Id.* at 28.

injured it working on the hot job pinning parts and she needed to see a doctor. Mr. Machebe “said okay”⁹ and proceeded to his office. Claimant testified:

Q. (Mr. Hobbs) Okay. When he said okay, what did you think that meant?

A. (Ms. Fleming) I thought he understood what I was telling him.

Q. Okay. Did you then seek medical treatment?

A. No. I did not. I continued telling him, and it wasn't until we switched schedules July 16th and I had a new supervisor, he had -- I had talked to him and said “I had been telling him and telling him, and I haven't gotten to go to the doctor yet. Could you please check into this for me?”¹⁰

Claimant also testified that in the latter part of June of 2001 she went directly to the safety manager who informed her that Mr. Machebe had not told him about her hand. Claimant advised him she needed to see the company doctor for her hand. Apparently, Mr. Machebe did not fill out an accident report so claimant filled one out. The safety manager lost that one and claimant had to fill out another one in July of 2001.

Claimant explained the supervisor has to write an accident report and then it's given to the safety manager, who schedules employees to go to the doctor. Claimant said she tried to talk to Mr. Machebe about her injury on a daily basis from June 4 to July 16, 2001, when she was finally approved to go to a doctor.

Claimant testified her right shoulder had been hurting for a couple of years but after she hurt her hand on June 2 or 3, 2001, her pain went from her hand up to her shoulder. Claimant acknowledged she had developed back problems in the late 1980s and neck and right shoulder problems in March of 1989 and had treated with Dr. Charles White and Dr. Paul Lesko. Claimant had also been treated for right shoulder and elbow problems by Dr. Harry A. Morris in 1992. In 2000 claimant went to see Dr. Eyster with complaints of neck pain radiating into the right arm. Dr. Eyster provided her with physical therapy for complaints of pain radiating from her right cervical area down her right shoulder and into her right hand. Dr. Eyster released claimant from his care for her neck and shoulder problems in August of 2000.

Claimant first sought medical treatment for this injury with Robert L. Wilson, M.D., on July 24, 2001. Dr. Wilson conducted an examination and sent claimant for EMG/nerve conduction studies which were normal. Claimant was instructed to continue doing her regular work duties. Dr. Wilson referred claimant to Dr. Morris, who had treated claimant

⁹ *Id.* at 32.

¹⁰ *Id.* at 32.

in 1992 for right shoulder pain radiating down the arm. At that time, he had diagnosed claimant with impingement syndrome which he treated conservatively with physical therapy, stretching and exercise. On October 8, 2001, claimant was evaluated by Dr. Morris for her right wrist. Claimant described how after using the air hammer she developed increasing pain in her right thumb and thenar area. Dr. Morris noted claimant had some increased soreness of her first dorsal compartment but the doctor believed it to be related to the CMC joint. Dr. Morris took x-rays and recommended a splint for claimant's thumb and wrist and put her on anti-inflammatories to control the pain. He also discussed the possibility of fusion surgery to her thumb joint. Claimant was told to avoid aggravating activities. Dr. Morris recommended claimant return in a month for an evaluation.

Claimant saw Dr. Morris again on November 5, 2001. Again, claimant's complaints were soreness over her first dorsal compartment. He treated claimant with an injection to her first dorsal compartment. Claimant was continued on anti-inflammatories.

Dr. Morris saw claimant next on December 3, 2001, for a follow-up. Claimant reported the pain in the first dorsal compartment area had gone away but she persisted with pain about the CMC joint of the thumb. Dr. Morris noted claimant was tender to palpation in that area. An injection was given in that joint and claimant was to utilize her wrist splint as needed. She followed up again on January 14, 2002.

At the January 14, 2002 office visit with Dr. Morris' physician assistant, claimant reported she was doing much better after receiving the injection from the last office visit. Claimant said that after the injection she felt that her symptoms were gone; however, when the numbing medication wore off the symptoms returned. She reported a significant amount of pain until the steroid took effect. After a week or two claimant started to get the same symptoms she had before. The physician assistant and claimant discussed other treatment strategies, including surgery, and claimant elected to go with ligamentous reconstruction with tendon interposition of the right thumb. Claimant was then given a work release with the restriction of wearing her splint.

Dr. Morris performed the ligament reconstruction tendon interpositional arthroplasty surgery on May 16, 2002. Dr. Morris testified the arthritis preexisted the use of the air hammer on June 3, 2001; however, it was his opinion that the use of the air hammer aggravated the arthritis and made it symptomatic. After claimant's surgery she was scheduled for a follow-up visit and Dr. Morris noted claimant's wound was healing and then he started claimant on therapy.

Claimant saw Dr. Morris again on August 28, 2002, for a follow-up visit. Dr. Morris' chart notes for that office visit reflect claimant's range of motion was very good, the wound was healed, stability of the thumb was good and the muscles were working. Claimant was then allowed to work without restrictions.

Claimant saw Dr. Morris for the last time on December 18, 2002. Claimant reported doing well with regard to pain relief and motion. She did not have quite the grip strength she would have liked. Dr. Morris tested claimant's grip strength and noted her strength was about half of what it was on her other hand; however, her motion was full. At that point Dr. Morris told claimant she should not be doing forceful gripping with the thumb as she had not fully regained her strength from the surgery. Dr. Morris provided claimant with a note to take to work regarding her inability to use forceful gripping with her right hand. Dr. Morris explained "forceful gripping" as "the wand used at a car wash for washing the car itself, that takes a lot of pressure to squeeze that wand. That's something she would not be able to do. I wouldn't advise her to do that because she can't generate the force across her thumb."¹¹ Dr. Morris did not impose any restrictions with regard to claimant's left hand. He made no documentation of shoulder or neck complaints other than in 1992. After he started treating her again in 2001, all of her symptoms were centered around her thumb.

Dr. Morris' opinion with regard to claimant's impairment of function for her thumb (CMC arthroplasty) based on the *Guides* was eleven (11) percent to the upper extremity, which converts to a seven (7) percent of the whole body. Dr. Morris did not believe the use of the computer was a causative factor in claimant's thumb pain. Dr. Morris opined that five (5) percent of claimant's overall thumb impairment was aggravation of the preexisting arthritis due to the use of the air hammer at work, with the remaining 95 percent being attributable to preexisting arthritis.

Judge Clark requested Daniel J. Prohaska, M.D., to perform an independent medical examination. Dr. Prohaska is a board-certified orthopedic surgeon who limits his practice to the treatment of shoulders, knees and elbows. At the December 3, 2002 independent medical examination, claimant presented with complaints of right shoulder pain and "pain in the lateral aspect of the neck."¹² Dr. Prohaska took claimant's history, reviewed records, took x-rays and performed a physical examination. On that date Dr. Prohaska diagnosed right shoulder impingement syndrome. He determined claimant was not at maximum medical improvement and recommended an initial conservative course of treatment including physical therapy and the possibility of a subacromial injection. If this failed, he would recommend an MRI to rule out further derangements inside the shoulder.

Claimant was seen again by Dr. Prohaska on February 20, 2003, after he became the court-ordered authorized treating physician. On that visit claimant's complaints were unchanged and similar to her complaints at the initial exam in December of 2002. Dr. Prohaska elected to proceed with the MRI arthrogram to evaluate claimant's rotator cuff. The arthrogram revealed a partial thickness tear of the supraspinatus tendon. With regard to causation, Dr. Prohaska testified that claimant's symptoms were consistent with using

¹¹ Morris Depo. at 14.

¹² Prohaska Depo. at 7-8.

an air hammer. Dr. Prohaska said that even if claimant only used the air hammer for one day, it could initiate a tear in the tendon that could continue to progress. After a March 20, 2003 visit Dr. Prohaska recommended an arthroscopy of the shoulder which he performed on May 2, 2003. The arthroscopy revealed a partial tear of the supraspinatus rotator cuff tendon and an impingement process caused by the acromion. Claimant also had a detachment of the superior labrum of her shoulder. These were surgically repaired. Thereafter, she received a course of physical therapy and was returned to light duty work on June 26, 2003. She was initially restricted to one-handed work with five pounds lifting which was increased to 10 pounds on August 14, 2003. On October 14, 2003, claimant received the final release with a permanent 40-pound lifting restriction as to the right arm and no restrictions as to the left. At that time claimant had only occasional aching in her shoulder and no neck complaints. Dr. Prohaska found no myofascial pain syndrome relative to the right shoulder girdle or neck. Dr. Prohaska acknowledged claimant would have some permanent impairment of function to the right upper extremity but did not offer an opinion concerning an exact percentage under the *AMA Guides*.

At the request of her attorney, claimant was examined by orthopedic surgeon C. Reiff Brown, M.D., on February 20, 2004. Dr. Brown diagnosed degenerative arthritis of the first carpal metacarpal joint of the right hand (thumb) which had been treated with arthroplasty yet remains symptomatic but with a normal range of motion. The doctor also diagnosed rotator cuff tendonitis and an acromial impingement syndrome rotator cuff tear which has been satisfactorily operated but with limited range of motion above shoulder level, crepitus and pain at the end of range. Dr. Brown further diagnosed myofascial pain syndrome involving the upper trapezius, scapular, infraspinatus, supraspinatus, rhomboids, levator scapular, upper right trapezius, and low cervical paraspinals. Dr. Brown related all of his diagnoses to claimant's work-related injury. He considered claimant to be at maximum medical benefit as to her right thumb and shoulder but noted the myofascial pain syndrome has not been treated. He determined claimant has a six (6) percent impairment of the right upper extremity on the basis of loss of range of motion of the shoulder, an additional six (6) percent impairment of the right upper extremity on the basis of crepitus on active range of motion of the right shoulder, a twelve (12) percent impairment of the right upper extremity on the basis of her tendon interposition arthroplasty of the first metacarpal phalangeal joint and an additional five (5) percent whole body impairment based on the DRE Cervicothoracic Category II of the *Guides* (4th ed.). These convert and combine to a total eighteen (18) percent impairment to the body as a whole. Although Dr. Brown attributed all of his impairment rating to claimant's work, he acknowledged that he was not aware of claimant's prior treatment history for her right upper extremity, shoulder and neck areas. Nevertheless, Dr. Brown went on to say that if claimant's symptoms subsided following her treatment with Dr. Eyster in August of 2000, then her condition at that time was not myofascial pain syndrome because the symptoms from that condition would not have resolved.

Claimant was also sent by her attorney for an independent medical evaluation with Pedro A. Murati, M.D., on December 3, 2003. Dr. Murati likewise diagnosed claimant with

myofascial pain syndrome at the level of the right shoulder girdle and neck in addition to her right thumb and right shoulder conditions which had been surgically corrected but with residual pain. He rated claimant's right upper extremity impairment at eleven (11) percent for the right thumb pain secondary to her status-post ligament tendon arthroplasty, and an additional five (5) percent for the loss of range of motion. For the right shoulder pain secondary to status-post rotator cuff repair and subacromial decompression, he gave a ten (10) percent right upper extremity impairment together with an additional four (4) percent for loss of range of motion at the level of the right shoulder. For the myofascial pain syndrome at the level of the right shoulder girdle and neck, Dr. Murati placed claimant into the DRE Cervicothoracic Category II for a five (5) percent whole person impairment. These ratings combined to a twenty-one (21) percent whole person impairment.

Dr. Murati related these impairments to claimant's employment, specifically her lifting activities, an excessive use of power tools and computer work. Claimant did not mention to Dr. Murati having received any neck and shoulder treatment in the year 2000. He was not provided with Dr. Eyster's records, but was aware of the history given to Dr. Wilson to the effect that she had had pain in her shoulder off and on for the last two years which became worse in June of 2001. Dr. Murati considered it significant that claimant described her symptoms as on and off as opposed to ongoing. Furthermore, although he agreed that additional history of medical treatment could change his causation opinion, he was not provided with any information at his deposition that caused him to change his opinion that claimant's condition and impairment were caused by her employment with the respondent.

Based on the record as a whole, the Board agrees with the ALJ's determination that the opinions of the treating physicians are the most credible and are entitled to greater weight. As a result, claimant's permanent impairment is found to be limited to her right upper extremity and shoulder.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge John D. Clark dated October 11, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Attorney for Claimant
Douglas C. Hobbs, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director